

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Notice of Proposed Rulemaking)	
)	CS Docket No. 02-52
Appropriate Regulatory Treatment for)	
Broadband Access to the Internet Over)	
Cable Facilities)	
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REPLY COMMENTS OF THE City of Seattle

This letter responds to comments made by two operators¹ about the City of Seattle's Cable Customer Bill of Rights (CCBOR, Bill of Rights or Ordinance).² The City believes it is important for the Commission to understand the context in which the CCBOR was originally adopted, the reasons the City believes its provisions are necessary, and the positive outcome that has resulted from its implementation.

I. Summary

In 1999, the City of Seattle adopted a Cable Customer Bill of Rights in response to a unique set of conditions (see below) resulting in unsatisfactory cable service to Seattle's citizens. The CCBOR established standards for cable companies operating in Seattle, and procedures and penalties if those standards are not met. Since that time, Seattle has assisted over 6000 of the approximately 165,000 citizens who receive cable television and an additional 45,000 receiving cable modem Internet service. In 2002, following three years of experience with the CCBOR, requests from the cable companies, and additional citizen concerns, the City of Seattle amended the CCBOR. The amendments codified inclusion of cable modem Internet services, clearly defined some operational terms, extended some existing consumer protections, and expanded existing privacy provisions.

¹Comments of Charter Communications (Charter) at 20 – 21 and 37. Comments of AT&T Corp. (AT&T) at 42-43.

² Seattle Ordinance No. 119402 as amended by Seattle Ordinance No. 120775, codified at Seattle Municipal Code (SMC) 21.60.800. For your convenience, we will attach a copy of the CCBOR under separate cover that reflects the recent amendments.

II. History of Seattle's Cable Customer Bill of Rights

In its franchise agreement with the City, AT&T's predecessor TCI agreed to fully rebuild its Seattle cable system no later than January 1, 1999³. In the fall of 1998 TCI notified the City it would be unable meet this deadline. When news of the default became public, it triggered an avalanche of complaints to the City.⁴

TCI's default occurred at the same time AT&T requested the City's approval to the transfer of the local franchisees and their franchises to AT&T. In light of the default and the transfer request the City undertook a comprehensive review of TCI's overall compliance with its franchise obligations and discovered that in addition to individual violations of the applicable franchise customer service standards, the company had also failed to meet the telephone answering standards contained in its franchise.⁵

To address the issues and violations presented by the default, the City's compliance review and the public outcry over customer service failures, the City adopted three ordinances, one of which was the Cable Customer Bill of Rights. Consistent with federal law, the CCBOR was adopted pursuant to the City's consumer protection powers. Given the range and depth of the customer service failures by the cable operator, the City believed that not only was the Ordinance essential to ensure that such failures did not happen again but also that its residents received a consistent, measurable and satisfactory level of service from the cable operator.⁶ At that time, the company did not object to passage of the CCBOR. In addition, the company paid substantial penalties, as required by its franchise, and made a commitment to the City to improve customer service.

The City wanted to provide subscribers a direct tangible benefit if the operator failed to live up to the standards contained in the CCBOR. As a result, the Bill of Rights provides for direct credits or other compensation to the customer, if the cable operator fails to meet standards contained in the Ordinance. As described more fully below, this Ordinance has provided direct benefits to local subscribers who would otherwise have no recourse if the cable operator's customer service levels declined. If local enforcement of consumer protection standards in cable modem service were denied, subscribers would face an increasingly expensive service with no redress for any system or modem failures by the operator.

³ The company had agreed to complete this rebuild within 36 months of the date of its franchise.

⁴ In one day alone the Office of Cable Communications (the Cable Office or OCC) received 62 angry calls from subscribers complaining about poor customer service, poor programming selections and poor reception. See, Memorandum to the Seattle City Council from Lynne G. Masters, dated January 11, 1999.

⁵ The standards contained in the franchise are general industry standards. Specifically, the company failed to meet the telephone answer time requirements during 1996, 1997, and 1998.

⁶ When the City adopted the CCBOR, it specifically found that "many Seattle cable customers do not receive competent, responsive customer service." Preamble to SMC 21.60.800 as amended. As a result, the Ordinance reflects City policy that "cable customers in Seattle should be able to expect competent, responsive service from cable operators providing services in the City pursuant to franchise agreements." SMC 21.60.800.

III. Implementation of the CCBOR to Cable Modem Internet

Recognizing that AT&T's cable modem service was still in its early stages of deployment, the City of Seattle granted AT&T more than six months for the service to get under way before applying the provisions of the Cable Customer Bill of Rights (CCBOR) to cable modem Internet service. The Office of Cable Communications discussed the application of the CCBOR to cable modem service with AT&T in the fall of 1999, and on November 9, 1999, notified the company that as of November 15, 1999 the City would begin enforcing its provisions on cable modem service. Significantly, AT&T voiced no concern or hesitation with the City's decision.

The most significant example of the CCBOR's success is the City's experience with AT&T's migration of its cable modem service from Excite@home to attbi. Between December 2001 and through January 2002 the Office of Cable Communications assisted almost 500 citizens when the company migrated its cable modem service from Excite@home to its own attbi network. As a result of our assistance, Seattle residents received more timely responses from local AT&T staff, and significantly greater credits.⁷ It is our observation that our assistance during this time has had the dual effect of restoring citizen faith in government and, at the same time, diffusing irritation with their cable company.

We note that according to AT&T, its Seattle cable modem market is one of the strongest in the country. It is clear that customer service standards applied to cable modem service, therefore, have not affected the company's ability to attract and retain customers.

IV. CCBOR Amendment Process

Charter's comments suggest that the CCBOR amendments were adopted in response to the Commission's declaratory ruling earlier this year.⁸ In fact the City began discussions with AT&T regarding these changes in the summer of 2000 and continued to solicit their comments throughout the amendment process. Contrary to Charter's comments, the amendments were made based on our experience administering the

⁷ Many callers were irritated with AT&T's proffered reimbursement of \$5.15 that was to be awarded all subscribers regardless of the length of their actual service outage. In some cases service outages lasted six weeks. The application of the CCBOR to cable modem service in this case increased the average award to Seattle customers from \$5.15 to \$67.00.

It should also be noted that of the nearly 500 complaints we received during the migration, more than 10% were from citizens outside Seattle, some nearly 100 miles away. Almost all of these customers expressed frustration, shared by Seattleites, that they could not reach anyone at AT&T despite hours on the telephone. Further, unlike Seattle, these people were upset that they had nowhere to turn.

⁸ Charter comments at 20.

CCBOR and in response to changes requested by the cable operators.⁹ For example, in response to AT&T's request, the City increased the time allotted for installing underground cable drops and liberalized the provisions governing the repair of customers' property during an installation or service call.

As adopted the CCBOR contained specific privacy provisions. Almost from the beginning the City began to realize those provisions were inadequate because they failed to address issues AT&T raised with each new annual privacy notice.¹⁰ The City became concerned that digital technology advances would enable the collection and disclosure of customers' viewing, surfing and shopping patterns. This concern was based on AT&T's revised statement that informed customers the company would collect and disclose such information.¹¹

Because the company's notices continue to state that the company intended to collect and eventually use personally identifiable information in a manner the City believes to be inconsistent with federal law, the City felt obligated to adopt privacy regulations consistent with federal law that expressly limit the company's use of such information. The City's application of the federal privacy provisions and the CCBOR privacy amendments are described more fully in the next section.

V. Privacy

AT&T and Charter Communications have filed comments in this proceeding relating to privacy provisions under federal and local law¹². Their comments suggest that the primary purpose of the privacy provisions of the Cable Act is to protect a cable operator's unfettered access to and use of personal information. The City believes, however, that the Cable Act and its legislative history demonstrate that Congress made clear the paramount importance of protecting a customer's right to privacy.

⁹ Shortly after its adoption all parties agreed that several provisions of the Ordinance needed clarification. In June 2000, for example, the Office of Cable Communications updated the City Council on the impacts of the Ordinance. A staff report to Council indicates that despite an improvement in customer service, problems still existed including subscribers' inability to contact a customer service representative within one minute; missed or late service appointments and installations; service outages; and lack of timely response to customer letters and emails. Other outstanding issues included codification of the CCBOR to encompass cable modem Internet, credit for outages, and definition of a complaint.

¹⁰ The Office of Cable Communications began discussions with AT&T regarding their privacy notice in the spring of 2001. At that time, the City discussed, among other ideas, the concept of having AT&T use a mail back postcard for customer opt-out. AT&T staff indicated that this would not seem to present a problem. By the fall of 2001 the OCC began preparing amendments to the CCBOR and, on November 8, 2001 discussed with AT&T the specific areas on which the amendments would focus, including additional privacy regulations.

¹¹ See, AT&T Broadband Subscriber Notice X72924 SM6000-Regul Priv. Revised 12/01. Received by OCC February 8, 2002. For the text of the notice see *infra* footnote 16.

¹² Comments of Charter Communications at 20 – 21 and 37. Comments of AT&T at 42-43.

Section 631 of the Communications Act of 1934, as amended, makes opt-in the default position for any collection or disclosure of personal information, subject to carefully crafted and narrow exceptions. It establishes a careful balance between a subscriber's right to privacy and the legitimate business activities of a cable operator. Section 631(b) (1) sets forth broad prohibitions on a cable operator's ability to collect personally identifiable information without the consent of subscribers, unless the information is necessary to render the cable service or other service to the customer or to detect unauthorized reception of cable services. It also explicitly and unambiguously limits the collection of personally identifiable information to that which is "necessary", (defined in the Seattle Ordinance as required or indispensable), to provide a cable service requested by the subscriber.

Section 631(c)(1) restricts what personally identifiable information a cable operator may disclose without the prior affirmative consent of a subscriber. This section limits disclosure without subscriber consent to that which is necessary to render a cable service, or to conduct a legitimate business activity related to the cable service or *other service provided by the cable operator to the subscriber* (i.e. disclosure to a billing service, to a cable installation subcontractor, or to a debt collection agency for the purpose of collecting money owed to the cable operator.) Without a subscriber's prior consent, Section 631 also allows the cable operator to disclose for purposes unrelated to the provision of cable service or other service to the subscriber, only the name and address of a subscriber, and then only if such disclosure does not reveal the shopping and viewing habits of a subscriber and the subscriber is given an opportunity to prevent such disclosure.

Seattle's recent amendments to the privacy provisions of the CCBOR¹³ are fully consistent with Section 631. Contrary to AT&T's assertions,¹⁴ nothing in the Ordinance prevents AT&T or any other cable operator from marketing their cable services or other services or from exercising any right that they have under Section 631. The Ordinance does, however, establish that a cable operator must first have the consent of the subscriber before taking any such action. The City included this requirement because the most recent AT&T privacy notice clearly states that AT&T intends to collect and disclose personally identifiable information in a manner that contravenes federal law and Congressional intent. For example, in Section 1, Collection & Use and Section 2, Disclosure, AT&T states that interactive television and cable Internet service will automatically collect subscriber information on use, programs, web sites, services ordered, and time on the system. Further, the statement indicates that this information will be disclosed to third parties -- other than those necessary to provide service -- to advertise products and programming based on individual subscriber viewing and ordering

¹³ Seattle Ordinance No. 120775, amending Section 21.60 of the Seattle Municipal Code. The privacy provisions are contained in Section 21.60.820(F).

¹⁴ AT&T comment letter at 41-43.

habits. Such a practice, in addition to being eerily “Big Brotherish,” would seem to directly contravene Congressional intent with regard to privacy protection.¹⁵

AT&T informs customers of an apparent right to collect and disclose any information about a subscriber. Company statements expressly contradict the customer’s right to opt-out of having this information collected or disclosed. In fact the statement informs the customer that this information may be disclosed to third parties. Moreover, the statements do not indicate that such disclosure will be only to the extent necessary to render or conduct a legitimate business activity related to a cable service or other service provided by the cable operator to the subscriber.

AT&T’s assertion that it can disclose personally identifiable information to third parties (even those not engaged in an activity related to cable service or other service provided by the cable operator to the subscriber) without a customer’s prior affirmative consent¹⁶ is a direct violation of Section 631. That any information collected because it was necessary to render a necessary cable service is therefore available for any other noncable-related purposes, including disclosure to third parties for marketing, is a clear misinterpretation of federal law.¹⁷

¹⁵ The notice states:

When you use interactive television and cable Internet service... the cable system automatically collects information on your use of such services, including information on the choices that a subscriber makes along the range of services offered, including the programs and web sites you view or services you order on the cable system or on the Internet, the time that you actually use the services or vie the programs and web sites and other information about your “electronic browsing.”

In the notice AT&T suggests that this information is used

to help understand subscriber reactions to gateway and services we offer and to evaluate the network. It help us to customize the interactive television and cable Internet services based on the interests of subscribers, and to direct programming and advertising that is likely to be of interest to you.

With respect to disclosure the notice advises subscribers that:

When you use interactive television and cable Internet service, certain information relating to your use of these services may be disclosed to third parties providing content or services on the interactive television platform. Such disclosure may include, without limitation, information on the choices that you make along the range of services offered, including the program and web site you view or services you order on the cable system or on the Internet, the time that you actually use the service or view the programs and web sites, and other information about your “electronic browsing....”

¹⁶ AT&T Comment letter at 41.

¹⁷ AT&T also asserts that it can collect and disclose any personally identifiable information to any third party because such information was somehow related to (as opposed to necessary) the provision of a service. The City believes it is entirely inconsistent with Congressional intent for AT&T, or any cable operator, to so broadly interpret the narrow exceptions on the collection and disclosure of personally

Seattle's 2002 amendments to the Cable Customer Bill of Rights are intended to specifically address the overbroad interpretation of the AT&T privacy statement. The City's Ordinance 120775:

- Prohibits collection and disclosure of any information regarding the extent of any individual subscriber's viewing habits or purchases made over the cable system without the prior affirmative consent of the subscriber, unless such information is necessary to render a service requested by the subscriber, or a legitimate business purpose related to the service. It also extends to interactive television services and most Internet services provided over the cable system;
- Requires cable companies to fully and completely disclose customer rights and the limitations imposed on a cable operator's collection, use and disclosure of personal information in clear language;
- Requires cable companies to provide stamped, self-addressed post cards which customers can mail in to have their names and addresses removed from any lists which the cable companies might use for purposes other than the direct provision of service to those customers;
- Establishes without ambiguity that once a customer "opts out" of the cable company's mailing list, that customer is permanently removed from that list unless he/she subsequently requests inclusion on such list.

Given AT&T assertion to the Office of Cable Communications and the Seattle City Council that they do not now, have never, and do not intend to disclose personal information, we are puzzled by AT&T's newfound concern as expressed in its letter of June 17, 2002 to the Commission. It is not clear to the City how the above provisions can be considered inconsistent or onerous.¹⁸ We believe these concerns about marketing are disingenuous and designed to draw attention away from their real aim of eliminating any restrictions on the collection and disclosure of subscriber's personal information over cable modems. We are puzzled by AT&T's newfound concern because it has repeatedly assured the City that it would not engage in such a practice without a customer's consent.

The Commission must affirm that existing federal law permits State and local laws that augment and are consistent with Section 631. Without such safeguards, AT&T makes clear, in its own words, that it intends to collect as much personally identifiable information as it can and use this information for purposes unrelated to providing a cable

identifiable information to the extent that it undermines the general opt-in rules against collection and disclosure.

¹⁸ In its comments to the Commission AT&T claims that "It cannot reasonably be disputed that market research relating to, and marketing of, cable Internet services is a "legitimate business activity related to" the provision of an "other service provided by the cable operator.

service or other service. The City has a right and an obligation to protect the privacy of its citizens from such practices as the development of subscriber profiles based on television viewing and Internet web surfing habits. Such profiles could be used inappropriately to provide targeted advertising to unknowing subscribers. Eventually, as the broadband market matures, data as diverse as a subscriber's heart rate or the contents of their refrigerator will flow through cable operator's facilities Comcast Corporation's recent unlawful tracking of the web site visits of its cable modem customers make the need for such protection clear. Such invasive practices are a serious violation of a subscriber's first and fourth amendment rights. If cable operators want more personally identifiable information to provide enhanced personalization to their product, Section 631 and Seattle's Ordinance do not prevent this. If they want such information they should make the value proposition to their customers rather than attempt to circumvent a customer's right to privacy by engaging in semantics and misleading statements.

VI. Conclusion

Since enactment of the CCBOR, the City has fielded over 6000 citizen inquiries, and responded in depth to over 2000 complaints.¹⁹ During this period AT&T has developed one of the strongest markets for cable internet service in the country with 42,000 customers compared to 140,000 cable TV customers. Clearly the existence of the Bill of Rights has not impaired the market for such service; in fact, the opposite may be true – customers in Seattle are more willing to sign up for the service know that some consumer protection is in place. At the same time, the City's experience demonstrates that the need for consumer protection legislation remains great because it is the last resort for the people, those who use the services, who need it most. The Commission must affirm the ability of local governments to protect its subscribers by confirming their right to administer customer service provisions.

For the foregoing reasons, the City strongly urges the Commission to leave intact the very consumer protections the City has unfortunately found to be so necessary.

Dated: August 6, 2002

Respectfully submitted,

/s/Rona Zevin

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¹⁹ The complaints range, with service outages, unknowledgeable customer service representatives, and late appointments frequently cited.

